

\$~15(Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 789/2018, CM APPL. 37942/2018

JOGINDER SANSANWAL Appellant

Through: Mr. Vivek B. Saharya, Adv.

versus

SOHAN & ORS Respondents

Through: Mr. Raghav Vig, Mr. Himanshu
Arora and Mr. Naqeeb Nawab, Adv. for R-
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CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
JUDGEMENT (ORAL)

% **17.10.2022**

1. The impugned order dated 27th July 2017, passed by the Additional District Judge (“the learned ADJ”) in CS 6915/16 (*Joginder Sansanwal v. Sohan*) reads as under:

“Plaintiff has filed amendment application as well as application for waiving the cost.
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Ld. counsel for defendant submits that earlier also cost of Rs.1,000/- was imposed upon the plaintiff on 09.04.2014, but he did not pay the same and filed an application for waiver of the cost which was dismissed vide order dated 05.09.2014 and has not been paid even till date. The cost sought to be waived through the present application is in respect of cost imposed on 14.02.2017. It is noticed that the said cost was imposed because of plaintiff not filing the amendment application despite being given opportunities. Plaintiff has submitted that he had filed the same and his counsel has stated that it was filed on 04.01.2017, although the date is not mentioned in the application. Record has been perused. Even the register of Reader of the court, where the

record of filing the applications is maintained, has been perused. The submissions made in the application are incorrect and the application is accordingly dismissed. Thus, cost remains unpaid.

Plaintiff has already filed amendment application on 20.03.2017 and perusal of the same reveals that it is only mentioning chronology of the proceedings of the present suit and can by no stretch of imagination be taken to be an amendment application. The application has been filed only to bypass the repeated directions of the court to file the amendment application since 27.09.2013 as has been written in the present application of amendment in para 3. I find no reason to further adjourn the matter. It is further noticed that defendant no.2 is appearing on all dates through his counsel and needs to be compensated for idleness of the plaintiff. In view of these observations suit is dismissed with cost of Rs.10,000/- to be paid to defendant no.2 by the plaintiff. File be consigned to record room.”

2. It is obvious, on its face, that the impugned order cannot sustain in law or in fact. A suit, once instituted, has to proceed to trial, and can be disposed of only after trial. It is only where one of the exigencies envisaged by Order VII Rule 11 of the CPC applies that the suit can be dismissed without trial.

3. Order VII Rule 11 of the CPC reads thus:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the

plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

4. Mr. Raghav Vig, learned Counsel for the respondent, advanced a preliminary objection to the maintainability of the present appeal, contending that the impugned order was not a “decree” within the meaning of Section 96 of the CPC and was not, therefore, appealable.

5. The submission is obviously misconceived. Section 96 of the CPC envisages an appeal against every decree passed by any court exercising original jurisdiction. The expression “decree” stands defined in Section 2 (2) of the CPC in the following terms:

“2. Definitions.—

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be

either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final”

6. In the present case a bare reading of the impugned order dated 27th July 2017 discloses that none of the circumstances, envisaged by Order VII Rule 11 of the CPC, applies. All that is said in the impugned order is that the petitioner-plaintiff had filed an application on 20th March 2017 under Order VI Rule 17 of the CPC to amend the plaint.

7. The learned ADJ seems to have been of the view that the application did not confirm to the requisites of an amendment application, as it was merely in the nature of a chronology of events. The learned ADJ also appears to have taken exception to the fact that such an application was filed after the petitioner-plaintiff had been granted repeated opportunities to do so. In that view of the matter, the learned ADJ has observed that no case had been made out to further adjourn the matter. Thereafter, observing that the respondent-defendant was required to be compensated for the idleness of the petitioner, the learned ADJ, somewhat quixotically, proceeds to

dismiss the suit with costs of ₹ 10,000/-.

8. A suit cannot be dismissed merely because the plaintiff is remiss, or even recalcitrant. The learned ADJ acted in manifest excess of jurisdiction in dismissing the suit merely on the ground that the application filed by the petitioner was not satisfactory or that repeated adjournments had been taken before the said application was filed.

9. Learned Counsel for the respondent questions the maintainability of the present appeal, as he submits that the impugned order is not a “decree” within the meaning of Section 96 of the CPC. The submission is completely bereft of merit, as Section 2(2) of the CPC expressly includes, within the definition of “decree”, “rejection of a plaint”.

10. The objection of the respondent is accordingly rejected.

11. Viewed any which way, the impugned order cannot sustain. It is accordingly quashed and set aside. This petition is accordingly allowed with no orders as to costs.

10. Needless to say, the suit would stand revived to its original number.

11. Let the both parties appear before the learned ADJ on 15th November 2022 for further proceedings in the suit.

13. The appeal stands allowed in the aforesaid terms, with no order as to costs.

C.HARI SHANKAR, J

OCTOBER 17, 2022/ak

